



*U.S. Department of
Justice*

Radiation Exposure Compensation Act Trust Fund

FY 2020 Budget &
Performance Plan

March 2019

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I. Overview for the Radiation Exposure Compensation Act

The Radiation Exposure Compensation Act (“the Act” or “RECA”) offers an apology and monetary compensation to individuals who contracted certain cancers and other serious diseases as a result of their exposure to radiation released during above-ground nuclear weapons tests or as a result of their occupational exposure while employed in the uranium industry during the build-up to the Cold War.

The Department of Justice established the Radiation Exposure Compensation Program (“the Program”) within the Civil Division to adjudicate claims under the Act. Since the Program commenced operations in April 1992, 48,049 claims have been filed and over \$2.28 billion has been awarded in connection with 34,942 approved claims (through September 30, FY 2018).

FY 2020 Estimate

For FY 2020, it is estimated that claim activity will be very similar to prior year activity. The Program anticipates that it will have minimal carryforward funding from FY 2019. Civil estimates that approximately \$65 million will be needed for the RECA Trust Fund in FY 2020.

Significant Achievements

\$2 Billion Program Award Benchmark

In March 2015, the Department issued a press release announcing the award of more than \$2 billion to eligible claimants under the Act. The release generated press stories throughout the southwestern United States.

Broad Range of Award Recipients

Compensation has been awarded to individuals residing in all 50 states, as well as several foreign countries. Residents of the “Four Corners” region of the American southwest (Arizona, New Mexico, Utah, and Colorado) filed the majority of the claims and received awards valued at over \$1.6 billion during the life of the program. Of the more than \$2 billion in awards, approximately \$310 million has been awarded to Native American claimants and distributed among members of 20 different tribes, and approximately \$330 million has been awarded to veterans, civil servants, and contractors who participated onsite in atmospheric nuclear tests.

Reduction of Claim Processing Time

Another notable accomplishment is the continued reduction in the average claim processing time. In FY 2015, the Program averaged 207 days to process an average claim and, in FY 2016, the program reduced this by 27% to an average processing time of 151 days. In FY 2017, the Program maintained a similar average processing time of 153 days. In FY 2018, the average processing time dramatically improved to 130 days per claim, which is 15% faster than in FY 2017.

II. Summary of Program Changes

Item Name	Description				Pg.
		Pos.	FTE	Dollars (\$000)	
RECA Claims	Additional funding for Civil's RECA program to pay valid claims.	0	0	\$15,000	10

III. Appropriations Language and Analysis of Appropriations Language

The FY 2020 Budget Request does not include proposed changes in the appropriations language.

IV. Program Activity Justification

Mission Statement: Fairly and expeditiously adjudicate claims, fully consistent with the Radiation Exposure Compensation Act, as amended; educate the public about the Act; and develop strategies for improving the Program.

RECA Program	Direct Pos.	Estimate FTE	Amount (\$ in thousands)
2018 Enacted	0	0	\$50,000
2019 Continuing Resolution	0	0	\$50,000
2020 Adjustments to Base and Technical Adjustments	0	0	\$0
2020 Current Services	0	0	\$50,000
2020 Program Increases	0	0	\$15,000
2020 Program Offsets	0	0	\$0
2020 Request	0	0	\$65,000
Total Change 2019-2020	0	0	+\$15,000

Program Description

From 1945 through 1962, the United States conducted nearly 200 atmospheric nuclear weapons tests while building the arsenal that became the cornerstone of the Nation's Cold War security strategy. At the same time, other world powers also engaged in testing nuclear weapons. The mining and processing of uranium ore that was conducted by thousands of workers was essential to the development of nuclear weapons. Many workers filed class action lawsuits that appellate courts eventually dismissed. Congress then devised a program to make partial restitution to the individuals who developed serious illnesses after their exposure to radiation released during above-ground atmospheric nuclear tests or following their employment in the uranium industry.

On October 5, 1990, Congress passed the Act and later broadened the scope of its coverage on July 10, 2000.

The Act established monetary compensation for individuals who contracted specified diseases in three defined populations:

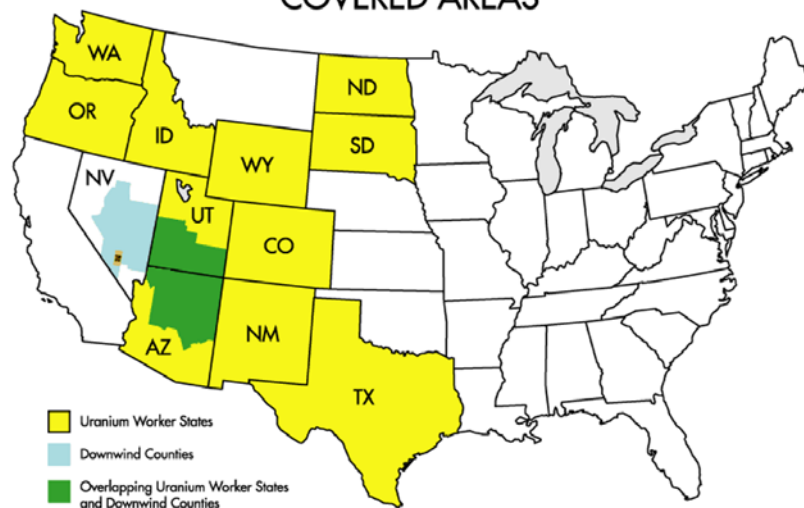
- Uranium workers (considered Section 5 claimants) – uranium miners, millers, and ore transporters receive \$100,000;
- Onsite participants (considered Section 4 claimants) – individuals present at atmospheric nuclear test locations receive \$75,000; and
- Downwinders (considered Section 4 claimants) – individuals who lived downwind of the Nevada Test Site receive \$50,000.

Department of Justice-issued regulations were designed to utilize existing records so that claims could be resolved in a reliable, objective, and non-adversarial manner, with little administrative cost to the United States or to the claimant.

“RECA claimants worked in hazardous occupations and were subjected to increased risk of disease to serve the national security interests of the United States. This extraordinary statute provides partial restitution to these individuals and their families for the sacrifices they made during a critical time in our nation’s history.”

*~ Civil Division,
March 2, 2015 Press Release*

MAP OF RADIATION EXPOSURE COMPENSATION ACT COVERED AREAS



The map above shows the geographic areas covered by the Act. Although the vast majority of claims are filed by people living in the “Four Corners” region (Utah, Colorado, New Mexico,

and Arizona), the Program has awarded compensation to individuals residing in every state as well as several foreign countries. The claimant population also includes several Native American tribes.

Today, the Program is at the center of a broad inter-agency network that comprises the comprehensive federal radiation compensation system, working with the Departments of Health and Human Services, Labor, Energy, Veterans Affairs, and Defense to administer the Act.

Funding History

The RECA Trust Fund was funded out of discretionary appropriations from FY 1992 to FY 2001. Following enactment of the 2000 Amendments and a subsequent influx of new claims, the appropriation became insufficient to meet the number of claims deemed eligible for compensation. In 2002, Congress addressed the problem within the Department of Defense Authorization Act for FY 2002, which established annual funding against mandatory spending caps. By 2003, however, the increased rate of new claim filings and approvals proved the caps to be inadequate. Working in close coordination, the appropriators and authorizers devised effective legislative solutions to the funding problems. The following statutes ensure that all eligible RECA claims will be paid in a timely manner throughout the life of the Program:

- The Consolidated Appropriations Act for 2005 contained language that made funding for the RECA Trust Fund mandatory and indefinite beginning in FY 2006. Henceforth, the Fund has exclusively paid on-site participants and downwinders (or Section 4 claimants).
- The National Defense Authorization Act for FY 2005 contained language requiring the Energy Employees Occupational Illness Compensation Fund to pay uranium workers – uranium miners, millers, and ore transporters (or Section 5 claimants).

In November 2011 and June 2012, the AARP published three articles related to atomic veterans and exposure to radiation. As a result, the media publicity led to an increase in claim filings, particularly by onsite participants, with an especially large spike in the second quarter of FY 2012 and another surge at the end of the third quarter. To quickly pay the eligible claims that were filed, the Program was apportioned additional funding of \$15 million in March 2012 for a total of \$87 million in FY 2012.

In FY 2012, the Program received 3,216 new Section 4 claims, of which 2,038 were from onsite participant claimants.¹ While the rate at which claims are filed has since decreased, the Program is focused intently on adjudicating claims efficiently and in a timely manner and continues to monitor and forecast approval rates and award increases.

¹ By comparison, in all of FY 2011, the Program received 1,383 Section 4 claims, of which only 240 were on site participant claims. The last time the Program saw such a dramatic increase in new claims was in FY 2001 after enactment of the RECA Amendments of 2000.

Historical Claim Statistics and Trends

Over the life of the Program, over 48,000 claims have been filed (through September 30, 2018). This has resulted in 47,564 adjudications, including 34,942 approvals, which reflects a 73 percent approval rate. Of the denials, only 16 claimants have sought review in Federal District Court.

Program Sunset

Under current law, all claims under RECA must be submitted on or before the Program sunset date of July 9, 2022. Any claims received after that date will be barred. As this date is towards the end of FY 2022, and the Program has 12 months to adjudicate a claim, the Program anticipates adjudicating claims received before the sunset date into FY 2023. Therefore, the Program anticipates funding required through FY 2023 to adjudicate and award those claims.

Proposed Legislation

The Program closely tracks legislation pending before Congress which would amend the current statute. Moreover, the Program strives to be responsive to congressional inquiries and works with the Department's Office of Legislative Affairs to provide useful information to members and their staffs. The current workload estimates and funding projections, however, are based on the current law and do not account for the possible impact of any statutory changes. Obviously, any such changes could dramatically change the Program as well as the amount requested from the Trust Fund.

RECA Report to Congress

In the National Defense Authorization Act for FY 2019, Congress directed the Attorney General to submit a report regarding the advisability and feasibility of using a scientific methodology (Probable Cause/Assigned Share – PC/AS) to review claims filed under RECA. It is the Department's view that it is not feasible to apply PC/AS for diseases under the existing RECA statute. The law does not require claimants to establish causation. Rather, straightforward eligibility criteria are provided by the Act which presume causation of covered diseases and allow for efficient administration. Therefore, the application of PC/AS under RECA would require new legislation to set forth eligibility requirements. The feasibility of such an approach depends heavily on the details of those reconstruction models and associated eligibility standards. Because no such criteria have been proposed, the Department cannot speculate on whether the application of PC/AS in a new conceptual benefit program is feasible and declines to take a position on the advisability of that policy. The RECA Report to Congress is currently undergoing clearance by OMB.

Claims Data

On the following page is data concerning Section 4 and Section 5 claims. Actual data for the last five years, as well as claim estimates for FY 2019 through FY 2020 are provided.

Radiation Exposure Compensation Act Workload							
Claims Filed and Approved							
(Dollars in Thousands)							
	FY 2014 Actual	FY 2015 Actual	FY 2016 Actual	FY 2017 Actual	FY 2018 Actual	FY 2019 Estimate	FY 2020 Estimate
Section 4 Claims – Downwinders and On-Site Participants							
Downwinders							
Pending, Beginning of Year	582	636	318	309	236	384	305
Claims Filed	933	966	1,009	894	1,053	1,101	1,113
Claims Approved	777	1,166	920	864	908	1,023	977
Total Value of Approvals	\$38,850	\$58,300	\$46,200	\$43,200	\$45,400	\$51,150	\$48,850
On-Site Participants							
Pending, Beginning of Year	909	284	159	170	131	128	95
Claims Filed	515	369	316	299	299	282	278
Claims Approved	688	310	192	232	204	191	174
Total Value of Approvals	\$50,506	\$22,791	\$14,055	\$17,104	\$15,095	\$13,936	\$12,696
Subtotal Section 4 Claims							
Pending, Beginning of Year	1,491	920	477	479	367	512	400
Claims Filed	1,448	1,335	1,325	1,193	1,352	1,383	1,391
Claims Approved	1,465	1,476	1,112	1,096	1,112	1,214	1,151
Total Value of Approvals	\$89,356	\$81,091	\$60,255	\$60,304	\$60,495	\$65,086	\$61,546
Section 5 Claims – Uranium Miners, Millers, and Ore Transporters							
Pending, Beginning of Year	129	163	145	141	134	122	118
Claims Filed	327	254	227	207	190	179	174
Claims Approved	196	192	141	129	147	112	109
Total Value of Approvals	\$19,600	\$19,200	\$14,200	\$12,900	\$14,700	\$11,157	\$10,822

Radiation Exposure Compensation Act Workload Claims Filed and Approved (Dollars in Thousands)							
	FY 2014 Actual	FY 2015 Actual	FY 2016 Actual	FY 2017 Actual	FY 2018 Actual	FY 2019 Estimate	FY 2020 Estimate
TOTAL (Section 4 Claims and Section 5 Claims)							
Pending, Beginning of Year	1,620	1,083	622	620	501	634	518
Claims Filed	1,775	1,589	1,552	1,400	1,542	1,562	1,565
Claims Approved	1,661	1,668	1,253	1,225	1,259	1,326	1,260
Claims Denied	651	382	300	296	293	332	315
Total Adjudications	2,312	2,050	1,553	1,521	1,552	1,658	1,575
Approval Rate	72%	81%	81%	81%	81%	80%	80%
Total Value of Approvals	\$108,956	\$100,291	\$74,455	\$73,204	\$75,195	\$76,243	\$72,368

Performance, Resources, and Strategies

The Program office is located in Washington, D.C. and is currently administered by a staff of five attorneys, eight claims examiners, and eight contractors within the Constitutional and Specialized Torts Section of the Civil Division's Torts Branch. The support staff reviews claim packages, assists claimants with their applications, and manages physical case files. RECA Program attorneys strive to fairly and efficiently process and resolve claims. Since its inception, the Program has generally far surpassed its goals for the timely processing and adjudication of claims.

a. Performance Plan and Report for Outcomes

The Civil Division is committed to upholding the rule of law and integrity in the proper administration of justice. The RECA Program directly supports the Civil Division in this goal. The Program's primary objective is to implement civil justice reform initiatives to resolve categories of claims for which traditional litigation has proven ineffective and to administer compensation programs enacted by Congress that offer non-litigation solutions for radiation exposure claimants.

The Program has drafted a number of performance measures that are included in the Civil Division's Performance Tables.

b. Strategies to Accomplish Outcomes

The Program will employ the following strategies to accomplish this mission:

- Utilize skilled claims examiners to conduct the initial review of claims, freeing the Program attorneys to maximize efficiency by concluding the adjudication and render the final determination.
- Access external data sources, such as the Social Security Administration, the National Institute for Occupational Safety and Health, the Public Health Service, and state cancer and tumor registries to assist claimants in securing the necessary documentation to support their claims to reduce the burden on claimants.
- Coordinate with the Department of Labor’s Energy Employees Occupational Illness Compensation Program to ensure that eligible Section 5 RECA claimants receive compensation in a timely manner. This includes the review of claimant files to decide eligibility pursuant to the Energy Employees Occupational Illness Compensation Program Act.
- Coordinate with the U.S. Department of Health and Human Services’ Radiation Exposure Screening and Education Program to assist grantees in providing relevant information to individuals screened for disease in the affected geographic regions.
- Brief Members of Congress and their staffs as requested. Provide information to Members of Congress and the public in an open, timely, and complete manner.
- Conduct outreach by traveling to areas with populations of potential claimants and participating in roundtable discussions held by congressional delegations for their constituents.
- Use a toll-free telephone line and website to communicate with claimants and publish regularly updated statistical information on www.data.gov.
- Respond timely to all media inquiries to ensure accurate information is disseminated to the public about the Program.

V. Program Increase: Radiation Exposure Compensation Act (RECA) Claims

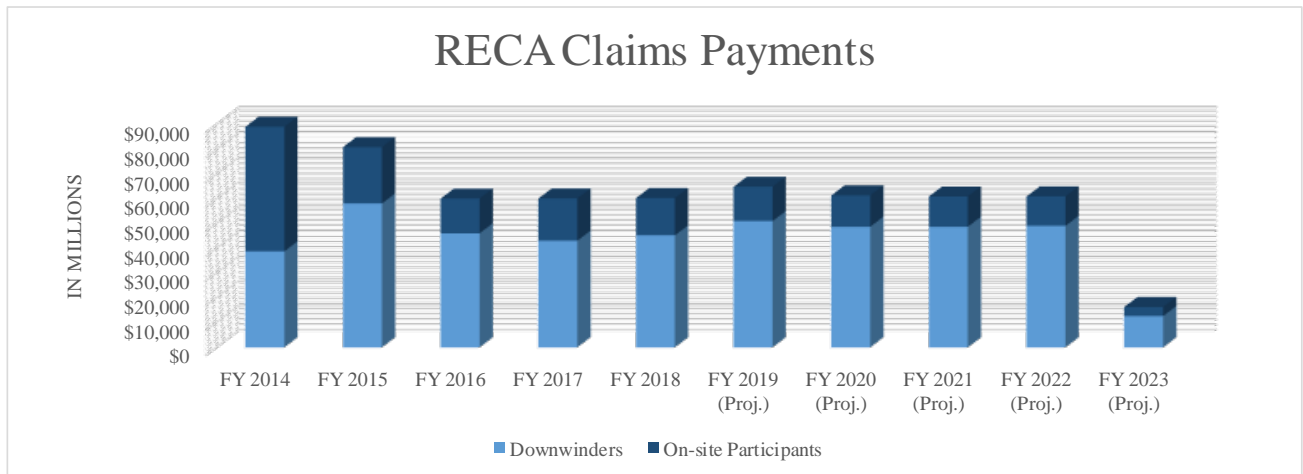
Organizational Program:	Civil Division, Radiation Exposure Compensation Act (RECA) Program
Strategic Goal:	4.1 – Uphold the Rule of Law and Integrity in the Proper Administration of Justice
Program Increase:	Positions <u>0</u> Atty <u>0</u> FTE <u>0</u> <u>\$15,000,000</u>

Description of Item

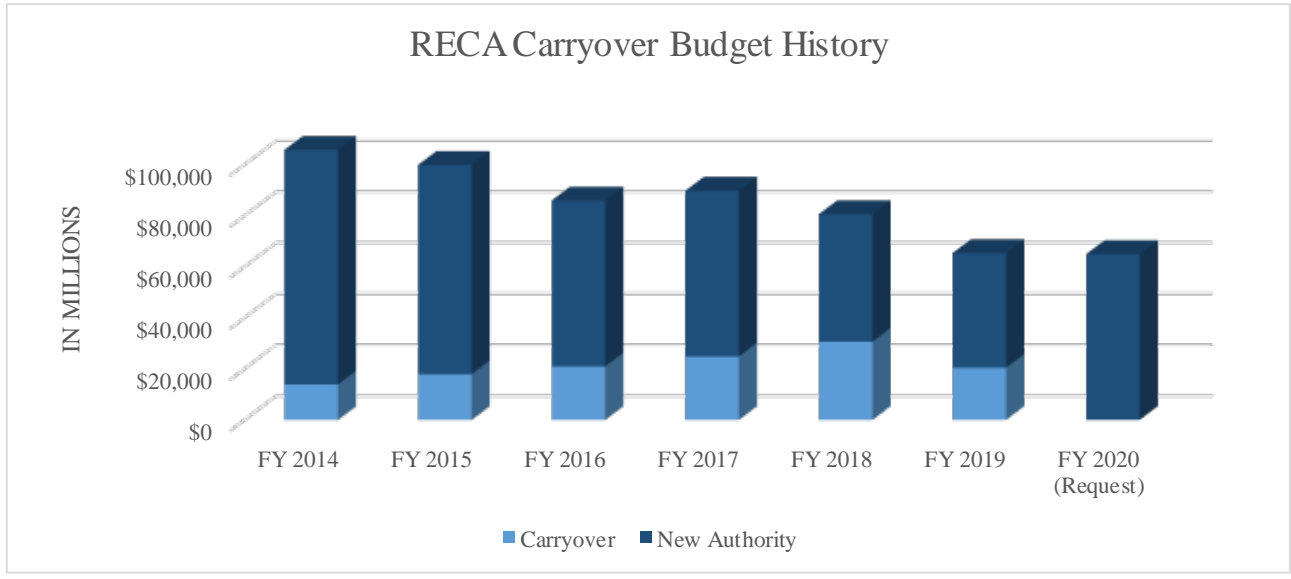
The Civil Division seeks a program increase of \$15,000,000 to pay Radiation Exposure Compensation Act (RECA) claims in Fiscal Year (FY) 2020.

Justification

Since FY 2016, the RECA program office has consistently seen annual Section 4 (Downwinders and Onsite Participants) award values of approximately \$60 million. Using Civil’s RECA liability model, which applies historical claims data and averages to determine future liabilities, the Civil Division anticipates future annual award values of \$60-65 million in the remaining years of the program.



In FY 2020, Civil anticipates exhausting carryover balances, and will need to return to the higher appropriated level of \$65 million. Carryover balances will be exhausted, and an influx of resources are needed.



Impact on Performance

The Civil Division is required by law to pay valid RECA claims. Without increased new authority in FY 2020, Civil will not have the funds available to pay the anticipated Section 4 claims.

Base Funding

<i>FY 2018 Enacted</i>				<i>FY 2019 Continuing Resolution</i>				<i>FY 2020 Current Services</i>			
Pos	Agt/Atty	FTE	\$(000)	Pos	Agt/Atty	FTE	\$(000)	Pos	Agt/Atty	FTE	\$(000)
0	0	0	\$50,000	0	0	0	\$50,000	0	0	0	\$50,000

Non-Personnel Increase/Reduction Cost Summary

Non-Personnel Item	Unit Cost	Quantity	FY 2020 Request (\$000)	FY 2021 Net Annualization (change from 2020) (\$000)	FY 2022 Net Annualization (change from 2021) (\$000)
RECA Claims			\$15,000	\$0	\$0
Total Non-Personnel			\$15,000	\$0	\$0

Total Request for this Item

	Pos	Agt/Atty	FTE	Personnel (\$000)	Non-Personnel (\$000)	Total (\$000)	FY 2021 Net Annualization (change from 2020) (\$000)	FY 2022 Net Annualization (change from 2021) (\$000)
Current Services	0	0	0	\$0	\$50,000	\$50,000	\$0	\$0
Increases	0	0	0	\$0	\$15,000	\$15,000	\$0	\$0
Grand Total	0	0	0	\$0	\$65,000	\$65,000	\$0	\$0